

Appl. No. 10/612,254
Response Dated April 16, 2007
Reply to Office Action of November 14, 2006

• • R E M A R K S / A R G U M E N T S • •

The Office Action of November 14, 2006 and Advisory Action of March 9, 2007 have been thoroughly studied. Accordingly, the changes presented herein for the application, considered together with the following remarks, are believed to be sufficient to place the application into condition for allowance.

By the present amendment independent claims 1 and 9 have been changed to recite that the upper and lower tubular members have a common central axis of pivot.

In addition, dependent claims 4 and 12 have been canceled.

It is submitted that the amendments presented herein for the claims are properly enterable after Final Rejection inasmuch as the Examiner has expressly suggested that applicant amend the claims to include the recitation; "cylindrical tubes having a common central axis of pivot."

MPEP 1207 indicates that "where an amendment merely cancels claims and/or adopts examiner suggestions, removes issues from appeal, or in some other way requires only a cursory review by the examiner," such an amendment should be entered after Final Rejection.

In addition, amendments that place an application into condition for allowance should be entered after Final Rejection.

Accordingly, entry of the amendments presented herein for the claims is respectfully requested.

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Claims 1, 3, 5-9, 11, and 13-22 are pending in this application.

Claims 1, 3-9 and 11-22 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S.

Patent No. 3,760,965 to Chandler.

With respect to claims 1, 9, 18-20 and 22, the Examiner has relied upon Chandler as disclosing:

...a support are 23 having an axis and capable of supporting a spare tire, and further discloses an upper planar guide plate 53 attached to an upper tubular member 27F, lower planar guide plate 59 attached to a lower tubular assembly (61 in FIG. 7) wherein an upper plate is coupled to a lower plate for relative rotational movement for rotating an arm 23 about a common axis and a support arm central axis (see FIGS 16-17).

With respect to claims 3-5 and 11-13 the Examiner has relied upon Chandler as disclosing:

...upper and lower tubular members each having a central axis and are attached at an angle that is non-perpendicular (FIG. 7, angle α) and are collinear and hollow.

With respect to claims 6, 7, 14 and 15 the Examiner has relied upon Chandler as disclosing "an axially central element 65 having threads."

With respect to claims 8 and 16 the Examiner has relied upon Chandler as disclosing "a latch mechanism 41."

With respect to claim 17 the Examiner has relied upon Chandler as disclosing "an arm 23 that includes structure that engages a latch mechanism 41."

With respect to claim 21 the Examiner has relied upon Chandler as disclosing "a tire mounting bracket 79."

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The Examiner has taken the position that:

With respect to tubular members, we need only a structure that defines a tube. Chandler's tubes 27 & 61, 63 are clearly tubes as they define walls with a hollow middle. Applicant argues that Chandler's plates 61 & 63 are not tubes but plates, but Chandler's plates 61, 63 along with the underside of arm 23 define a body having walls and a hollow middle.

In response to applicant's arguments submitted February 14, 2007 the Examiner has stated (in the Advisory Action of March 9, 2007 that:

Collinear is not a feature that is recited in claims 1 & 9. However, claim 4 recites collinear where collinear equates to structures which lie along the same line. Chandler's tubes lie on a line as they are at least adjacent. In addition, broadly construed tubular structures have an infinite number of lines. Applicant may wish to recite --cylindrical tubes having a common central axis of pivot--.

As noted, the Examiner's "upper tubular member 27F" and "lower tubular assembly (61 in FIG. 7)" do not have a common central axis of pivot.

Accordingly, it is submitted that independent claims 1 and 9, as amended herein, distinguish over Chandler.

Entry of the present amendment and an early allowance of the application are respectfully requested.

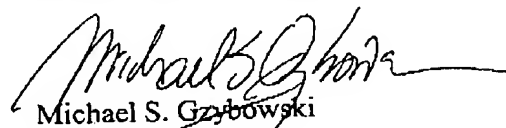
It is believed that the above represents a complete response to the Official Action and reconsideration is requested.

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If upon consideration of the above, the Examiner should feel that there remain outstanding issues in the present application that could be resolved, the Examiner is invited to contact applicant's patent counsel at the telephone number given below to discuss such issues.

To the extent necessary, a petition for an extension of time under 37 CFR §1.136 is hereby made. Please charge the fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 12-2136 and please credit any excess fees to such deposit account.

Respectfully submitted,


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